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Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Environment and Conservation
Division:	Office of General Counsel
Contact Person:	Brian Clifford
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 2nd Floor Nashville, Tennessee 37243
Phone:	(615) 532-0131
Email:	Brian.Clifford@tn.gov

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	ADAAA Coordinator
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 22nd Floor Nashville, Tennessee 37243
Phone:	1-866-253-5827 (toll free) or 615-532-0200 Hearing impaired callers may use the TN Relay Service 1-800-848-0298
Email:	Beverly.Evans@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Multi-Media Room, 3 rd Floor
Address 2:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue
City:	Nashville, Tennessee
Zip:	37243
Hearing Date :	11/28/18
Hearing Time:	1:30 p.m. <input checked="" type="checkbox"/> CST/CDT <input type="checkbox"/> EST/EDT

Video Conferencing Locations

Address 1:	Conference Room Nashville Environmental Field Office
Address 2:	711 R. S. Gass Blvd.
City:	Nashville, Tennessee
Zip:	37216
Hearing Date :	11/28/18
Hearing Time:	1:30 p.m. <input checked="" type="checkbox"/> CST/CDT <input type="checkbox"/> EST/EDT

Address 1:	Conference Room Memphis Environmental Field Office
Address 2:	8383 Wolf Lake Drive
City:	Bartlett, Tennessee

Zip:	38133-4119		
Hearing Date :	11/28/18		
Hearing Time:	1:30 p.m.	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Address 1:	Conference Room Jackson Environmental Field Office		
Address 2:	1625 Hollywood Drive		
City:	Jackson, Tennessee		
Zip:	38305		
Hearing Date :	11/28/18		
Hearing Time:	1:30 p.m.	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Address 1:	Conference Room Columbia Environmental Field Office		
Address 2:	1421 Hampshire Pike		
City:	Columbia, Tennessee		
Zip:	38401		
Hearing Date :	11/28/18		
Hearing Time:	1:30 p.m.	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Address 1:	Conference Room Cookeville Environmental Field Office		
Address 2:	1221 South Willow Avenue		
City:	Cookeville, Tennessee		
Zip:	38506		
Hearing Date :	11/28/18		
Hearing Time:	1:30 p.m.	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Address 1:	Conference Room Chattanooga Environmental Field Office		
Address 2:	1301 Riverfront Parkway, Suite 206		
City:	Chattanooga, Tennessee		
Zip:	37402		
Hearing Date :	11/28/18		
Hearing Time:	2:30 p.m.	<input type="checkbox"/> CST/CDT	<input checked="" type="checkbox"/> EST/EDT

Address 1:	Conference Room Knoxville Environmental Field Office		
Address 2:	3711 Middlebrook Pike		
City:	Knoxville, Tennessee		
Zip:	37921		
Hearing Date :	11/28/18		
Hearing Time:	2:30 p.m.	<input type="checkbox"/> CST/CDT	<input checked="" type="checkbox"/> EST/EDT

Address 1:	Conference Room Johnson City Environmental Field Office		
Address 2:	2305 Silverdale Drive		
City:	Johnson City, Tennessee		
Zip:	37601-2162		
Hearing Date :	11/28/18		
Hearing Time:	2:30 p.m.	<input type="checkbox"/> CST/CDT	<input checked="" type="checkbox"/> EST/EDT

Additional Hearing Information:

If it is hard for you to read, speak, or understand English, TDEC may be able to provide translation or interpretation services free of charge. Please contact Brian Clifford at (615) 532-0131 for more information.

The purpose of this rulemaking is to broaden Rule 0400-01-01-.01 for managing public records to incorporate all of the elements required by Tennessee Code Annotated section 10-7-503(g). The Department had previously adopted a public records policy effective June 30, 2017. The proposed rule incorporates the required elements of this existing policy, and also addresses aggregation of multiple records requests, copying records with personal equipment, and sufficient identification of records.

Question and Answer Session

Prior to the rulemaking hearing, the Department is offering, by Video Conference, a 30-minute question and answer session on these draft rules starting at 1:00 p.m. CST and 2:00 p.m. EST.

An initial set of draft rules has been prepared for public review and comment. The "DRAFT" rules may be accessed for review using at <https://www.tn.gov/environment/ppo-public-participation/ppo-public-participation/ppo-general.html>.

Draft copies are available for review at the Nashville Central Office (see address below).

Tennessee Department of Environment and Conservation
Office of General Counsel
William R. Snodgrass TN Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 532-0131

Office hours are from 8:00 AM to 4:30 PM, Monday through Friday (excluding holidays).

Oral or written comments are invited at the hearing. In addition, written comments may be submitted prior to or after the public hearing to: Tennessee Department of Environment and Conservation, Office of General Counsel Attention: Brian Clifford, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 2nd Floor, Nashville, Tennessee 37243; telephone (615) 532-0131 or fax (615) 532-0145. However, such written comments must be received by 4:30 PM CST, November 28, 2018, in order to assure consideration. For further information, please contact Brian Clifford at the above address or telephone number or by e-mail at Brian.Clifford@tn.gov.

Revision Type (check all that apply):

☒ Amendment
☐ New
☐ Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
0400-01-01	Fees and Charges for Certain Departmental Services
Rule Number	Rule Title
0400-01-01-.01	Access to Department of Environment and Conservation Public Records

Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to http://sos-tn-gov-files.s3.amazonaws.com/forms/Rulemaking%20Guidelines_September2016.pdf.

Chapter 0400-01-01
Fees and Charges for Certain Departmental Services

Amendments

Chapter 0400-01-01 Fees and Charges for Certain Departmental Services is amended by deleting the Chapter title and giving it a new title to read as follows:

Public Records, Fees, and Charges for Certain Departmental Services

Authority: T.C.A. §§ 4-5-201, et seq., 10-7-503; 10-7-504(a)(21); 11-1-101; 11-1-108; and 68-203-103.

The Table of Contents to Chapter 0400-01-01 Fees and Charges for Certain Departmental Services is amended by deleting the title of Rule 0400-01-01-.01 in its entirety and substituting instead the following:

0400-01-01-.01 Public Records

Authority: T.C.A. §§ 4-5-201, et seq., 10-7-503; 10-7-504(a)(21); 11-1-101; 11-1-108; and 68-203-103.

Rule 0400-01-01-.01 Access to Department of Environment and Conservation Public Records is amended by deleting it in its entirety and substituting instead the following:

0400-01-01-.01 Public Records

(1) Purpose

The purpose of this rule is to establish the process by which the Department will provide access to its public records pursuant to the TPRA. Personnel of the Department shall provide timely access and assistance to persons requesting to inspect or receive copies of public records. No provision of these rules shall be used to hinder access to the Department's public records. However, the confidentiality, integrity, and organization of records, as well as the efficient and safe operation of the Department, shall be protected.

(2) Definitions

"Department" means the Tennessee Department of Environment and Conservation.

"OORC" means the Tennessee Office of Open Records Counsel.

"Public Records" means all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency. Public records do not include the device or equipment, including, but not limited to, a cell phone, computer, or other electronic or mechanical device or equipment, that may have been used to create or store a public record.

"Public Records Request Coordinator" and "PRRC" mean the individual designated by this rule who has the responsibility to ensure public record requests are routed to the appropriate records custodian and are fulfilled in accordance with the TPRA. The Public Records Request Coordinator may also be a records custodian. The term also includes the Public Records Request Coordinator's designee.

"Records Custodian" means the office, official, or employee lawfully responsible for the direct custody and care of a public record. The records custodian is not necessarily the original preparer or receiver of the record.

"Requestor" means a person seeking access to a public record, whether it is for inspection or duplication.

“TPRA” means public records laws compiled in T.C.A. Title 10, Chapter 7, Part 5, often referred to as the Tennessee Public Records Act.

(3) Requesting Access to Public Records

- (a) Except as described in this subparagraph, public record requests shall be submitted to the PRRC to ensure the requests are routed to the appropriate records custodian and fulfilled in a timely manner. Public record requests may be submitted to the PRRC using the contact information set forth in part (4)(a)3 of this rule. However, if a requestor submits a public records request directly to a records custodian, the records custodian may fulfill the request without submitting the request, response, or records through the PRRC if:
 - 1. Responding will not incur charges under this rule or the Schedule of Reasonable Charges issued by the OORC; and
 - 2. The records custodian is reasonably certain that the information or records are not confidential.
- (b) Requests for inspection only may be made orally to a records custodian or the PRRC or submitted in writing using the Public Records Request Form, found in paragraph (8) of this rule, or a substantially similar form provided by the Department, completed in accordance with the instructions, and submitted to the PRRC. If the request is made orally, as a best practice, the PRRC should request a mailing or electronic mailing address from the requestor for providing any written communication required under the TPRA.
- (c) Requests for copies, or requests for inspection and copies, shall be made in writing the Public Records Request Form, found in paragraph (8) of this rule, or substantially similar form, completed in accordance with the instructions therein, and submitted to the PRRC.
- (d) Proof of Tennessee citizenship by presentation of a valid Tennessee driver's license (or alternative acceptable form of identification) is required as a condition to inspect or receive copies of the Department's public records. The Department may waive the requirement to present proof of Tennessee citizenship if the Department determines that doing so is in the State's best interest.
- (e) The Department is not required to sort through files to compile information or to create or recreate a record that does not exist. Any request for inspection or copying of a public record shall be sufficiently detailed to enable the Department to identify the specific records to be provided for inspection and copying. A potential requestor who is uncertain of either how to sufficiently identify records or if certain records exist may contact the PRRC or other appropriate Department personnel prior to submitting a records request. A requestor who is acting in the capacity of an attorney must contact the Department's Office of General Counsel for this purpose.

(4) Responding to Public Records Requests

- (a) Public Record Request Coordinator
 - 1. The PRRC, or a records custodian fulfilling a request in accordance with subparagraph (3)(a) of this rule, shall review public record requests and make an initial determination of the following:
 - (i) If the requestor provided evidence of Tennessee citizenship;
 - (ii) If the records requested are described with sufficient detail to enable the Department to identify the specific records that are to be provided; and
 - (iii) If the Department is the custodian of the records.
 - 2. The PRRC shall acknowledge receipt of the request and take any of the following appropriate action(s):

- (i) Advise the requestor of the requirements of this rule for obtaining public records, if the requirements have not been met.
 - (ii) If appropriate, deny the request in writing using the Public Records Request Response Form developed by the OORC (the "Response Form"), or a substantially similar form, providing the appropriate ground, including but not limited to the following:
 - (I) The requestor is not, or has not presented evidence of being, a Tennessee citizen.
 - (II) The request lacks sufficient detail to identify the specific records to be provided for inspection or copying.
 - (III) An exemption or other law makes the record not subject to disclosure under the TPRA. The specific exemption or other law will be provided to the requestor in accordance with the TPRA.
 - (IV) The Department is not the custodian of the requested records.
 - (V) The records do not exist.
 - (iii) If the PRRC deems it appropriate, contact the requestor to discuss modification of the request.
 - (iv) Forward the records request to the appropriate records custodian in the Department.
 - (v) If requested records are in the custody of a different governmental entity, and the PRRC knows the correct governmental entity, advise the requestor of the correct governmental entity and PRRC for that entity if known.
3. (i) The title of the PRRC is "Tennessee Department of Environment and Conservation, Public Records Request Coordinator." The PRRC's contact information is:
- Tennessee Department of Environment and Conservation
 312 Rosa L. Parks Ave., 2nd floor
 Nashville, TN 37243
 615-532-8964
TDEC.Public.Records.Request@tn.gov
<https://www.tn.gov/environment/contacts/public-records-request.html>
- (ii) Any changes to the contact information will be posted on the Department's website.

(b) Records Custodian

1. Upon receiving a public records request for inspection or copies, a records custodian shall promptly make the requested public records available in accordance with T.C.A. § 10-7-503. If the records custodian is uncertain as to whether an applicable exemption or other law would apply to make requested records confidential, the custodian shall consult with the PRRC.
2. If it is not practicable for the custodian to promptly provide the requested records because additional time is necessary to determine whether the requested records exist; to search for, retrieve, or otherwise gain access to records; to determine whether the records are subject to confidentiality requirements; to redact records; or for other similar reasons, then a records custodian shall contact the PRRC to discuss the reason(s). The PRRC shall send the requestor a completed Response Form within seven business days from the date the records custodian received the request and provide the reason(s)

additional time is needed to respond to the request.

3. If a records custodian intends to deny a public record request, the records custodian shall coordinate with the PRRC. If the PRRC determines that grounds for denial exist, the PRRC shall deny the request in writing as provided in subpart (a)(2)(ii) of this paragraph using the Response Form.
4. If a records custodian reasonably determines production of records should be segmented because the records request is for a large volume of records, or additional time is necessary to prepare the records for access, the records custodian shall use the Response Form, to notify the requestor that production of the records will be in segments and that a records production schedule will be provided as expeditiously as practicable. If the PRRC deems it appropriate, the PRRC may contact the requestor to see if the request can be narrowed.
5. If a records custodian discovers records that existed at or before the time of the records request and that are responsive to the records request but were omitted from the Department's response to the records request, the records custodian shall contact the PRRC to explain the omission, and the PRRC shall contact the requestor concerning the omission and produce the records as quickly as practicable.

(c) Confidential Records and Redaction

1. Records that are designated by law as confidential, including but not limited to records designated as confidential under T.C.A. § 10-7-504, shall not be open for public inspection.
2. In accordance with T.C.A. § 10-7-504(a)(21)(A)(i), the following records, and any other records determined by the Department to allow a person to identify areas of structural or operational vulnerability of a utility service provider or that would permit unlawful disruption to, or interference with, the services provided by a utility service provider, shall be treated as confidential and shall not be open for public inspection:
 - (i) The latitude and longitude coordinates of public water system wells, intakes, water mains, water tanks, valves and GIS analyses derived from these data;
 - (ii) Records pertaining to the delineation of source water protection areas; and
 - (iii) Records pertaining to well head protection areas and inventories of significant potential contaminant sources.
3. If a record contains confidential information or information that is not open for public inspection, the records custodian shall prepare a redacted copy prior to providing access to the record. However, if the entire record is confidential, then it shall not be produced even in redacted form. If questions arise concerning redaction, the records custodian should coordinate with the PRRC.
4. If electronic records must be printed to be redacted for inspection, the Department shall charge for per-page copies, in accordance with paragraph (7) of this rule.

(5) Inspection of Records

- (a) The Department will not charge for inspection of the Department's public records.
- (b) The PRRC or records custodian shall promptly respond to a public records request for inspection. The time and location for inspection of records within the offices of the Department should be coordinated with the PRRC or records custodian.

(6) Copies of Records

- (a) The PRRC or records custodian shall promptly respond to a public records request for copies.

- (b) Copies will be available for pickup at a location specified by the records custodian or PRRC.
 - (c) Upon payment for postage, copies will be delivered to the requestor's address by the United States Postal Service.
 - (d) A requestor will not be allowed to make copies of records with personal equipment.
- (7) Fees and Charges and Procedures for Billing and Payment
- (a) Production Costs

Upon a request for records under the TPRA, the Department shall charge the requestor a reasonable charge for production costs, including labor, duplication, and delivery, based on the most current Schedule of Reasonable Charges issued by the OORC, available at the website of the OORC. If a public record has commercial value as that term is described by T.C.A. § 10-7-506(c), the Department shall charge the requestor an additional fee in accordance with the procedure set out in Rule 0400-40-01-.02.
 - (b) Payment of Production Costs

The Department shall provide the requestor an estimate of the production costs, including labor, duplication, and delivery, before the initial production of the requested records. The Department shall require the requestor to provide full payment of the production costs before copies of the requested records are delivered or otherwise made available.
 - (c) Waiver of Production Costs.
 - 1. The Department shall waive the production cost if the total production cost, including labor, duplication, and delivery, is less than \$10.
 - 2. When the requestor is a federal, state, or local government agency, the Department may provide the requested copies of public records without charge if the Commissioner determines that the reduction is in the best interest of the public. A request made by a federal, state, or local government agency on behalf of a citizen under the TPRA shall be treated as a request by a citizen and charged accordingly.
 - 3. The Department will not charge for the first hour of labor.
 - (d) Reduction of Fees.

The Commissioner may reduce any part of the fees calculated under these rules upon a determination that the reduction is in the best interest of the public.
 - (e) Aggregation of Frequent and Multiple Requests
 - 1. The Department will aggregate requests for inspection or copies of records in accordance with the Reasonable Charges for Frequent and Multiple Request Policy promulgated by the OORC when four or more requests are received within a calendar month either from a single individual or from a group of individuals deemed by the Department to be working in concert.
 - 2. Records will be aggregated at the Department level.
 - 3. The PRRC is responsible for making the determination that a group of individuals is working in concert. The PRRC or the records custodian will inform the individuals that they have been deemed to be working in concert and that they have the right to seek review from the OORC.
 - 4. Routinely released and readily accessible records are excluded from aggregation. However, a requestor will be encouraged to search for such records online prior to

submitting a public records request.

5. Once a requestor reaches the aggregation threshold, the PRRC and the records custodian are no longer required to deduct the labor threshold or the minimum production cost established by this paragraph.

(8) Public Records Request Form

PUBLIC RECORDS REQUEST

The Tennessee Public Records Act (TPRA) grants Tennessee citizens the right to access records made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental entity that exist at the time of the request. The TPRA does not require records custodians to compile information or create or recreate records that do not exist.

Many of the Department's public records are available via online data viewers or public notice web pages. Potential requestors are encouraged to check these online sources for the availability of desired public records before submitting a public records request. Visit the following web address to access the online data viewers: [URL ADDRESS]

To: Records Request Coordinator, Tennessee Department of Environment and Conservation, 312 Rosa L. Parks Ave., 2nd floor, Nashville, TN 37243 or email to:
TDEC.Public.Records.Request@tn.gov

From: _____
Requestor's Name and Contact Information

Is the requestor a Tennessee citizen? ☐ Yes ☐ No

Proof of Tennessee citizenship is required for access to TDEC's public records. Please include a copy of your Tennessee driver's license (or alternative acceptable form of identification) with your request.

Request: ☐ Inspection
☐ Copy/Duplicate

If costs for copies are assessed, the requestor has a right to receive an estimate. Do you wish to waive your right to an estimate and agree to pay copying and production costs in an amount not to exceed \$ _____? If so, initial here: _____.

Delivery preference: ☐ On-Site Pick-Up ☐ USPS First-Class Mail
☐ Electronic ☐ Other: _____

Records Requested:

Provide a detailed description of the record(s) requested, including: (1) type of record; (2) timeframe or dates for the records sought; and (3) subject matter or key words related to the records. Under the TPRA, record requests must be sufficiently detailed to enable a governmental entity to identify the specific records sought. As such, your record request must provide enough detail to enable the records custodian responding to the request to identify the specific records you are seeking.

Signature of Requestor and Date Submitted
CN-[]

Authority: T.C.A. §§ 4-5-201, et seq., 10-7-503; 10-7-504(a)(21); 11-1-101; 11-1-108; and 68-203-103.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: October 1, 2018

Signature: _____

Name of Officer: Jenny Howard

Title of Officer: General Counsel

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

Department of State Use Only

Filed with the Department of State on: _____

Tre Hargett
Secretary of State